

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLES JOHNSON, : Case No.: 23-cv-2441  
Plaintiff, :  
v. :  
CLEARVIEW AI, INC., : New York, New York  
Defendant. : July 11, 2023  
-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff: ALSTON & BIRD, LLP  
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1           THE DEPUTY CLERK: Your Honor, this is in  
2 the matter of Johnson versus Clearview AI, Inc.,  
3 et al.

4           Counsel, please state your name for the  
5 record, beginning with plaintiff.

6           MR. PENARO: Good morning, Your Honor.  
7 Steve Penaro from Alston & Bird. I'm joined by my  
8 colleague, Kristen Kuan, and we're here on behalf of  
9 plaintiff, Charles Johnson.

10          THE COURT: Good morning, and thank you to  
11 both of you.

12          And representing the defendants this  
13 morning?

14          MR. GILLER: Good morning. It's Ron Giller  
15 from Gordon & Rees, and I'm here with my colleague,  
16 Mallory Benner.

17          THE COURT: Okay. Thank you as well.

18          Some of you on the docket may not yet have  
19 entered notices of appearance. If you will be going  
20 forward in this case, I will ask you to file them  
21 when you can. This is our initial pretrial  
22 conference in this case. There is also a -- an  
23 application for a dispositive motion, so we'll be  
24 discussing that as well.

25          Mr. Penaro, if you'll just allow me the

1 indulgence, I've had a chance to read the complaint  
2 and to read the parties' briefing. From my  
3 perspective, sir, I think that there are a lot of  
4 details that I would have liked to know before going  
5 forward with resolving the questions about the  
6 adequacy of the pleadings, and -- which, perhaps,  
7 suggests that the pleadings may not be fully  
8 adequate.

9 I want to make clear that I do understand  
10 the difference between Rule 8 and Rule 9(b), and I  
11 do understand pleading standards, but particularly  
12 with respect to the issue of disparagement or icing  
13 your client out of business opportunities, I got the  
14 sense that there were more conclusory statements  
15 than actual allegations that I could properly  
16 consider in the context of a 12(b)(6) motion.

17 Separately, there's at least one section --  
18 it's paragraph 39 -- where the statement is that,  
19 "upon information and belief," discovery will reveal  
20 something. And I found that to be a bit of a  
21 tension because it would seem to me -- your client  
22 knows who he referred, so I'm not sure why he's  
23 asking who the agreements were with, but that  
24 there's a tension between saying, my client is  
25 giving referrals that are not being heeded -- and

1     that's one species of breach -- and my client has  
2     given referrals that have led to business agreements  
3     for which my client has not gotten the appropriate  
4     commission, which seems to be the other side of  
5     that.

6             So my point is, I -- there's a lot of  
7     conclusory statements here. I don't actually know  
8     what's happening. So perhaps you could begin by  
9     telling me what really are your client's concerns  
10    and what evidence he really has that this agreement  
11    has been breached. And I thank you very much for  
12    allowing me that indulgence. Go ahead, sir.

13            MR. PENARO: Sure. And, Your Honor, if I  
14    might, maybe it's useful to provide some sort of  
15    brief background before really getting into what  
16    you're, I guess, focused on in terms of the  
17    evidence, in terms of the breach of 5, Section 5,  
18    and then the disparagement issue with 4(b). But if  
19    the Court will indulge me for a moment, I could give  
20    you some background and start that way.

21            THE COURT: Yes.

22            MR. PENARO: Your Honor, this case, it's a  
23    fairly simple case. Mr. Johnson co-founded a  
24    facial-recognition technology company called  
25    SmartChecker with the defendants in or around

1 February of 2017. About a year and a half later, in  
2 November of 2018, the parties entered into what you  
3 have before you, the wind-down agreement, under  
4 which they agreed to transfer assets and shares of  
5 the old company to this new company called  
6 Clearview AI.

7 It was at this time that Mr. Johnson  
8 relinquished -- and through this document, through  
9 this wind-down agreement, that Mr. Johnson  
10 relinquished his substantial ownership interests in  
11 the old company, SmartChecker, for a smaller  
12 interest in Clearview, but with a 10 percent  
13 commission. And he would get 10 percent commissions  
14 on gross revenues when he introduced new customers  
15 to Clearview that resulted in consummated sales.

16 Why would he make this trade? Well,  
17 Mr. Johnson, as an FBI informant, has close  
18 connections and ties to the law enforcement  
19 intelligence communities, was led to believe that  
20 this would be a very lucrative arrangement, this  
21 trade; otherwise, he wouldn't have exchanged his  
22 substantial interests.

23 Going to the merits --

24 THE COURT: I'm sorry, sir. I'm going to  
25 ask you to pause for just a second. So far, a lot

1 of what you told me is in the complaint, but that's,  
2 I suppose, okay.

3 Did you just say your client is an FBI  
4 informant?

5 MR. PENARO: He was a former FBI informant,  
6 correct.

7 THE COURT: I see. Where I come from,  
8 folks don't normally announce that, so -- but you  
9 did. So go ahead and tell me why that was going to  
10 be useful.

11 MR. PENARO: Just for the fact that he has  
12 connections to -- close connections to law  
13 enforcement and the intelligence community.

14 THE COURT: I got it.

15 MR. PENARO: And that's why --

16 THE COURT: That's also -- sir, please.  
17 That's also at paragraph 24 of your complaint, so I  
18 guess there it was, too.

19 MR. PENARO: Yep.

20 THE COURT: I should have noticed it with  
21 the read. I think I was -- I'm just -- but it's now  
22 out there again. All right.

23 So go ahead. Former informant, ties to law  
24 enforcement, and?

25 MR. PENARO: Right. And I bring -- I raise

1     that because, again, when we're talking about the  
2     breaches here, and maybe more to your question,  
3     Judge, where is the evidence, the answer is, it's  
4     with the defendants. And I understand your concern  
5     that there are companies and entities, law  
6     enforcement agencies, intelligence community members  
7     that we know that we made introductions, and they  
8     are not apparently in the complaint.

9             You know, the -- you know, for example, we  
10    made introductions to the NSA and multiple police  
11    departments in Texas and many police departments in  
12    Florida, including Miami-Dade County. We have tried  
13    to reach out to those agencies, those affiliates,  
14    and it turns out that many of the contacts that  
15    Mr. Johnson had are no longer with those companies.  
16    And likewise, given the nature of the technology at  
17    issue here, facial-recognition software, there's  
18    kind of a shroud of confidentiality that pertains to  
19    these contracts and these agreements. So it's not  
20    as simple as calling up a lead and saying, hey, I  
21    know I introduced you to Clearview two years ago,  
22    what happened with that? In many instances, those  
23    individuals are not there. And if they are, they  
24    have no incentive to answer our phone calls or to  
25    provide us with the consummated contracts due to

1 confidentiality concerns. So...

2 THE COURT: Okay. Then what is your basis  
3 for arguing that some subset of those people your  
4 client referred did, in fact, enter into agreements  
5 with Clearview AI?

6 MR. PENARO: Well, we're aware -- and to  
7 use the police departments that I just referenced,  
8 Texas and in Florida -- we're aware that many of  
9 these police departments use Clearview AI, including  
10 Miami-Dade County. And so the introductions that  
11 Mr. Johnson made were with the exact sorts of  
12 customers that Clearview sells its products to in  
13 the same regions, the same law enforcement agencies,  
14 many of which we know use the technology. And so  
15 we -- we're --

16 THE COURT: Sure. Although, the -- again,  
17 sir, the possibility exists that there's someone in  
18 the Clearview family who, him or herself, had  
19 alternate connections to these agencies. I don't  
20 think you're suggesting that your client is the one  
21 person who could have put Clearview in touch with  
22 the Miami-Dade Police Department. Or is that your  
23 argument?

24 MR. PENARO: I -- of course, there is a  
25 possibility, Your Honor, that folks at Clearview



1     could have directly reached out to these law  
2     enforcement agencies. But, again, going back to the  
3     FBI informant issue that you raised at the outset,  
4     that's why this was an appealing or lucrative  
5     arrangement. My client had those contacts, those  
6     law enforcement contacts, and that is where  
7     Clearview was selling its product.

8             So, yes, of course -- I don't want to speak  
9     in absolutes -- it is possible that Clearview may  
10    have reached out to these folks on its own, but that  
11    was the value add that my client brought.

12            THE COURT: Okay. But other than  
13    Miami-Dade, are you aware of any other agency or  
14    police department who is using Clearview that you  
15    believe is as a consequence of your client  
16    introducing them?

17            MR. PENARO: Again, we don't know for  
18    certain, otherwise we would have certainly put it in  
19    the complaint. But we believe that there are  
20    several police departments, particularly in Texas  
21    and in Florida, that we've heard through others that  
22    are using or have used Clearview's software,  
23    Clearview's product. Which ones exactly we don't  
24    know. And that is why, as we put in the papers, we  
25    think discovery is going to be incredibly useful

1 here.

2 And, in fact, you know, we did ask before  
3 this lawsuit was initiated. We said -- we reached  
4 out and said, hey, can you provide us -- can you let  
5 us know, you know, who you consummated contracts  
6 with. And they said, we -- you know, we don't have  
7 any of those contracts. We asked them for an  
8 affidavit, and that request was not met with an  
9 affidavit. So we think that we need discovery here  
10 to get -- to get at those consummated contracts.

11 THE COURT: Okay. All right. Please  
12 continue, sir.

13 MR. PENARO: Well, I think, hopefully, that  
14 addresses your concern, Your Honor, as to the -- I  
15 guess, what was styled in the papers of the "upon  
16 information and belief argument" pertaining to the  
17 breach of Section 5, the sales commission piece.

18 With respect to the breach of Section 4(b),  
19 the disparagement issue, that, I think, is a little  
20 bit more straightforward. Section 4(b) -- and I  
21 have in front of me here -- of the wind-down  
22 agreement states that the individual defendants  
23 agree that at no time during the restricted period,  
24 which is a period of two years following the  
25 November 2018 wind-down agreement -- so they agree

1     that during that restricted period shall the  
2     individuals -- I'm skipping ahead a little -- make  
3     or cause or assist any other person to make any  
4     statement or other communication to any third party  
5     which impugns or attacks or is otherwise critical of  
6     the reputation, business or character of the company  
7     or, importantly, any of its representative  
8     directors, officers, representatives, agents or  
9     employees. Mr. --

10           THE COURT: And that's -- sir, one moment,  
11     please, sir.

12           I actually thought you were relying on the  
13     next sentence, where the company agreed it wasn't  
14     going to attack the business or character, any of  
15     the individuals, with your client being defined  
16     among the individuals, correct?

17           MR. PENARO: Well, no. I would argue that  
18     our client -- my client was most -- you know, at the  
19     very least, an agent. He was an owner of the  
20     company when certain remarks were made. He was an  
21     owner of the -- 10 percent owner of Clearview. I  
22     believe, up through and including October of 2021,  
23     he was a 10 percent owner.

24           He also, like I said, was per -- you know,  
25     through paragraph 5, was providing services, and

1     that's where the sales commission piece came in. So  
2     at the very least, he was an agent, but I would  
3     submit that he -- you know, whether he's an agent or  
4     owner, again, I would submit that's a factual issue  
5     that would not warrant the grant of a motion to  
6     dismiss at this juncture. But --

7             THE COURT: Okay. Mr. Penaro, please stop  
8     because I think you're not understanding me. My  
9     point is a little bit different, which is -- I  
10    understood the sentence that you were reading to  
11    talk about individuals, which might be Mr. Schwartz  
12    or Mr. Ton-That or in -- would proscribe them from  
13    saying anything derogatory about an agent of the  
14    company or an employee of the company, which you say  
15    your client is.

16            But I'm looking at the next sentence, which  
17    says the company -- which I understand to be a  
18    defendant in this case, is it not -- is not able to  
19    say anything bad about any of the individuals, which  
20    includes your client directly. Are you not  
21    proceeding under that sentence?

22            MR. PENARO: Well, we're proceeding against  
23    the individuals on the breach of Section 4(b).

24            THE COURT: I see. Okay. All right.

25            MR. PENARO: Yeah. That claim is just

1     against the individuals, Your Honor. I think that's  
2     clearly pled in the complaint. If you look at --  
3     and I'll just -- if you allow me to open the  
4     complaint, you'll see Cause of Action 2, breach of  
5     contract against the individual defendants, and it's  
6     on page -- it's right above paragraph 56 on page 10.

7             THE COURT: Okay. All right. So what, in  
8     fact, was said bad -- what bad things were said  
9     about your client?

10            MR. PENARO: That he wasn't a co-founder of  
11     Clearview. And again, in a vacuum, that might not  
12     sound like the worst thing in the world, but it,  
13     kind of, colors my client as a liar. It ruins his  
14     reputation in the public where he is telling people  
15     that he helped co-found a leading facial-recognition  
16     company. And then you have the other co-founders  
17     basically saying, I don't know what you're talking  
18     about. He didn't do this with us, and the documents  
19     suggest otherwise.

20            So, really, you know, he -- my  
21     understanding is he made some other remarks, or they  
22     made some other remarks. Well, at the core of it,  
23     Your Honor, is the fact that they denied his role as  
24     co-founder of Clearview publicly.

25            THE COURT: I see.

1           MR. PENARO: And they did this in  
2     *The New York Times*.

3           THE COURT: They did this in *The New York*  
4     *Times*? Okay.

5           MR. PENARO: That's my understanding.

6           THE COURT: All right. Sir, as has been  
7     suggested by my questions, one of the things I'm  
8     going to do after speaking with you is to speak to  
9     defense counsel and ask them whether they are hell  
10    bent, as it were, on pursuing their motion to  
11    dismiss.

12           Before I were to schedule a motion to  
13    dismiss, I certainly want to give your client an  
14    opportunity to amend the pleadings if you and your  
15    client thought that was a thing to do. So is that  
16    something you're interested in doing, sir, if I  
17    cannot persuade the folks on the other side of the V  
18    to refrain from bringing a motion to dismiss?

19           MR. PENARO: Yes, Your Honor. Obviously,  
20    I'd want to discuss it with the client, but I would  
21    counsel them to the extent that we could -- it's --  
22    what I'm hearing from Your Honor is that, to the  
23    extent we could put in some more specifics here,  
24    that would go a long way in potentially obviating  
25    the need for motion practice at this stage, and so

1     that's how I would phrase it to my client. And to  
2     the extent that we can include some more specifics,  
3     then that would be -- I think that would be useful  
4     and maybe get -- you know, prevent this detour of  
5     the motions. Yes, that is something we --

6             THE COURT: Yeah, well -- and to be clear,  
7     sir, I can -- I can't promise that that will  
8     forestall the motion. I just --

9             MR. PENARO: Understood.

10            THE COURT: I do think it might make it --  
11     it might make it a little bit easier for me to  
12     decide it. I do -- I think I've made clear what I  
13     think are, you know, some issues.

14            But let me ask a related question, and this  
15     is just a question for which hope springs eternal.  
16     It's your -- at this stage, sir, is there any  
17     utility -- my sense is no -- in early ADR in this  
18     case? My sense is you guys would have tried to do  
19     this before the lawsuit was brought, but I'll ask.

20            MR. PENARO: Speaking on behalf of  
21     plaintiffs, I think we would certainly consider  
22     that. You're right, we did try at a high level,  
23     settlement discussions. There was a prior counsel  
24     involved before that discussions didn't go anywhere.

25            I don't want to speak for anyone,

1 Mr. Giller, on your side of the V, but we would be  
2 amenable to ADR proceedings.

3 THE COURT: Okay. All right. Let me  
4 then -- sir, I don't want to cut you off if there's  
5 anything else you'd like me to know, but at this  
6 time, I'd like to turn to defense counsel.

7 MR. PENARO: Sure. Nothing else at this  
8 point, Your Honor.

9 THE COURT: Okay. Mr. Giller, I appreciate  
10 your patience, sir, and let me hear from you at this  
11 time.

12 MR. GILLER: Hi, Judge. I appreciate that.

13 So you've hit on a lot of the things that  
14 we've been struggling with, with this complaint and  
15 the reason we sent the letter in. I don't believe  
16 that plaintiff is somebody intended by this contract  
17 to be covered by 4(b). I think it's pretty clear.  
18 And the argument that's not in the complaint, but  
19 which is what he's making in his papers, that  
20 counsel is making in his papers and argued to you  
21 now, is the agency argument, but it's not pled.  
22 There's no pleading here about Mr. Johnson having  
23 any ability to bind the company or any kind of  
24 transfer of authority from the company over to him.

25 And any of the indicia of agency is not in



1 the complaint. So, one, that's why I didn't address  
2 it in my moving papers, because I didn't expect that  
3 to be their argument. But even now hearing it, it's  
4 not here, so, you know, I still think that's a fatal  
5 flaw to this first part of the -- you know, this  
6 Count 2 against the individual. He's not  
7 somebody -- the other thing that I didn't mention,  
8 because I didn't know this was their argument, but  
9 in 4(d) it talks about that these covenants that  
10 they're relying upon for their claim are necessary  
11 to protect the company's confidential and  
12 proprietary information in goodwill, not an  
13 individual like Mr. Johnson.

14 And then in 4(e), it goes on to talk about  
15 that if the parties breach Section 5, the company  
16 shall be entitled, in addition to and without  
17 limitation, all the remedies. So clearly, this  
18 section is designed to protect the company, not  
19 Mr. Johnson, an individual who had a contract, you  
20 know, that he was going to get paid on if he  
21 actually referred potential customers. So with  
22 respect to Count 2, I don't think there's any basis  
23 for that.

24 Similarly, on Count 1, you know, again, you  
25 struck on the thing that has troubled us, which is

1     they would know if some -- they're claiming there  
2     was a breach of this contract.  If they're claiming  
3     there was a breach, then they have to know that  
4     there was somebody that signed up with my client and  
5     they were not paid on.  I can tell you, based upon  
6     my investigation and speaking to my client, there is  
7     nobody.  But I understand that's, you know, a  
8     factual issue on that part.  But as a pleading  
9     matter, if they had somebody, then they would have  
10    pled it.  It wouldn't be on information and belief.  
11    And, you know, my client shouldn't have to defend  
12    something in the hypothetical world of, you know, if  
13    there was somebody out there.  Well, if they know of  
14    somebody, then they should have pled that.  And  
15    then, as I understand it, there isn't anybody.

16           THE COURT:  Well, what about the Miami-Dade  
17    Police Department, sir?

18           MR. GILLER:  This is the first -- you know,  
19    Counsel and I have had a number of conversations.  
20    This is the first I'm hearing about an allegation of  
21    Miami-Dade, so I -- I don't want to speak, you know,  
22    beyond what I've just said, but I'm not aware of  
23    anybody signing a contract that was referred by  
24    Mr. Johnson.  I will certainly investigate  
25    Miami-Dade, but unless this is something that just

1 happened, which I really doubt, I don't think  
2 there's anything to that either.

3 THE COURT: Well, do you want to respond --

4 MR. GILLER: That's easy enough for me to  
5 check.

6 THE COURT: Okay. Well, sure, except I  
7 wouldn't be able to consider it, but I appreciate --  
8 I appreciate you, just for Rule 11 reasons, checking  
9 this out.

10 But do you -- would you be able to speak,  
11 sir, to the comments that Mr. Penaro was making, for  
12 example, about his client's ties to law enforcement  
13 and, sort of, this secrecy that would inhere in --  
14 for any number of reasons, in people disclosing the  
15 agreements they had entered into with Clearview?

16 I mean, he's basically saying --

17 MR. GILLER: Again, this is the first time  
18 I'm hearing this.

19 THE COURT: Sure. He's basically saying  
20 the value that he -- "he," Mr. Johnson -- added was  
21 to put you-all -- the defendants here -- in touch  
22 with a number of law enforcement agencies or  
23 officers. And is it the -- I mean, would you agree,  
24 sir, at the very least, that Mr. Johnson did give  
25 your client's names or referrals?

1           MR. GILLER: I under -- my understanding is  
2 there were some referrals. It was not a significant  
3 number. And those referrals did not lead to any  
4 consummated contracts with a single exception of  
5 one -- I think it's an airport, maybe, that is in  
6 the works, but has not paid any money.

7           So there's one possibility, not even an  
8 actual one. And if that one came to fruition and  
9 fit within the contract, the company absolutely  
10 planned to pay on it if that was the case, but I'm  
11 not aware of any others based upon the investigation  
12 I've done to date.

13          THE COURT: Did you advise Mr. Penaro that  
14 there -- about the airport, about the possibility of  
15 one of these referrals bearing fruit?

16          MR. GILLER: It hasn't borne fruit, so  
17 there hasn't been a reason for this to have come up.  
18 And we've been in this --

19          THE COURT: Of course.

20          MR. GILLER: You know, at this point, that  
21 hasn't been something that's been part of the  
22 discussions. No.

23          THE COURT: All right. Let me ask a  
24 different question, sir. And if you believe it's  
25 not something I should know, then you will tell me

1     that.

2               When Clearview AI is signing up clients, is  
3     it the case that there's some indication in signing  
4     up the client as to how this client came to be a  
5     client of Clearview AI, such that there would be a  
6     space somewhere to indicate whether it was a  
7     referral from Mr. Johnson or not?

8               MR. GILLER: I can't speak to that, Judge.

9               THE COURT: Okay. All right. Because he  
10    says, if only he had discovery, he would know. He  
11    would be able to recognize your clients as folks he  
12    had introduced you to.

13              MR. GILLER: I appreciate that, but, you  
14    know, we're in federal court. He filed a complaint  
15    saying we breached the contract -- my client  
16    breached the contract, but it's all on information  
17    and belief. He has no information that it actually  
18    happened, so that's not how this works. I mean, he  
19    shouldn't be able to proceed on this claim if he has  
20    no basis for it.

21              THE COURT: All right. What about -- would  
22    you acknowledge -- and the answer may be no -- that  
23    your client may have said that Mr. Johnson did not  
24    have an involvement in the development or the -- the  
25    formation of Clearview AI?

1           I mean, I was wondering what the  
2   disparaging comment was, and I was just told by  
3   Mr. Penaro that the disparaging comment was that he  
4   was not a founder of Clearview. Do you know any --  
5   can you speak to that issue at all, sir?

6           MR. GILLER: I can speak to the -- well,  
7   let me address this a little more directly.

8           One, I think there have been some comments.  
9   I don't know specifically which one he's referring  
10   to because, from reading the complaint, it sounds  
11   like there were disparaging comments, but clearly,  
12   hearing this, there were not.

13          There may have been some comments about  
14   this. I don't know specifically what is being  
15   referred to. I do know that Mr. Johnson himself is  
16   a prolific social media poster and frequently posts  
17   negative comments about the company to the point  
18   that my client has asked me to investigate whether  
19   we want to file a defamation action.

20          And just to take it a step further -- and  
21   this is no reflection upon Counsel, but Mr. Johnson  
22   was tweeting negative things about me personally as  
23   the attorney for the defendants. So he is  
24   prolifically out there posting negative things.  
25   It's not part of this case. I'm just putting this

1 in some context. So I don't know exactly which  
2 comment. If they want to show it to me, I'm happy  
3 to take a look at it, but it's not pled, and I  
4 haven't seen it.

5 THE COURT: Okay. All right. And, well,  
6 if you -- if -- does your client hold the view that  
7 Mr. Johnson was not a founder of Clearview?

8 MR. GILLER: I need to investigate that a  
9 little more. I know that they don't have -- share  
10 the same view about his involvement in the company.  
11 I think their view is -- again, I don't want to  
12 speak too far out of school here.

13 THE COURT: Of course.

14 MR. GILLER: I think their view is that his  
15 role was much more limited than he believes his role  
16 was.

17 THE COURT: I see. But it -- you're taking  
18 the position, sir, that saying that is not  
19 disparaging.

20 MR. GILLER: Correct. I am taking that  
21 position. I also don't know what the actual  
22 statement is that they're referring to, so it's hard  
23 for me to, sort of, address whether I think it's  
24 disparaging or not.

25 THE COURT: Okay. Fair enough.

1           As I suggested in my conversations with  
2 Mr. Penaro, I did want to get a sense, Mr. Giller,  
3 whether you were -- and I used the expression "hell  
4 bent" on filing a motion. It sounds like you may  
5 be, but I also do want to examine whether there is  
6 any utility in sending the parties to mediation or  
7 to a settlement conference before any amended  
8 complaint is filed and any motion scheduled.

9           Again, please understand, sir, I don't have  
10 a sense of what happened before the complaint was  
11 filed, so, for all I know, you-all could have been  
12 talking about settlement for years and just didn't  
13 work out or -- or not. So tell me, please, your  
14 thoughts about motion practice, even after  
15 amendment, and about settlement.

16           MR. GILLER: Well, I will say, if you're  
17 asking me personally, after seeing negative tweets  
18 about me from the plaintiff, that did make me a  
19 little more hell bent on filing a motion.

20           THE COURT: Okay.

21           MR. GILLER: But from my client, which is  
22 more important, they're the ones driving the  
23 decision-making on that. They feel very strongly  
24 that there should not be a case here. They don't  
25 feel that they breached the contract. They don't



1 feel they made a disparaging statement. So, yes,  
2 they would like a motion to be filed.

3 THE COURT: Okay. This, I understand.

4 And does that also -- for that reason, sir,  
5 that means that you're not interested in this time  
6 in a -- your clients, not you, sir, personally --  
7 but your clients are not interested in ADR at this  
8 time?

9 MR. GILLER: We -- Mr. Penaro and I had  
10 some friendly discussions beforehand about seeing if  
11 there was any room for settlement. And after some  
12 back and forth, it didn't look like at that point  
13 there was. I'm happy to take it back to them, but,  
14 you know, my last instruction was, you know, we  
15 would like to knock this out, or as much of it out  
16 as we can first.

17 THE COURT: I'm sorry. Just if you could  
18 explain something to me, when you say you had some  
19 friendly discussions with Mr. Penaro, I'm, of  
20 course, appreciative of that. You thought that  
21 there was some possibility of settlement, sir?  
22 Should I -- should I --

23 MR. GILLER: No. There -- sorry.

24 THE COURT: No? Oh, okay.

25 MR. GILLER: No, there was not at that

1 point.

2 THE COURT: Thank you. That's what I --  
3 that's the clarity that I needed. Not at this time.  
4 Okay.

5 Well, obviously, I will not stop the  
6 parties from continuing to have those discussions,  
7 and perhaps those discussions would be aided by a  
8 resolution of a dispositive motion.

9 Mr. Penaro, sir, may I have a sense,  
10 please -- and it's not my interest in, for example,  
11 wrecking anyone's summer plans. May I have a sense  
12 of how much time you would like to file an amended  
13 complaint, or at least to discuss the possibility  
14 with your client, and if in agreement, to file an  
15 amended complaint.

16 MR. PENARO: Sure, Your Honor. Excuse me.  
17 Looking at a calendar here as I pull that up. I'm  
18 actually on vacation next week, but two to three  
19 weeks, maybe the first week of August, if that  
20 works.

21 THE COURT: Okay. That will work for me.  
22 That's the -- let's say the 4th on that Friday, the  
23 4th of August for the amended complaint. All right.

24 And, Mr. Giller, sir, about how much time  
25 would you like for your opening brief?

1           MR. GILLER: Trying to remember when I'm  
2 supposed to be taking vacation. I'm not sure which  
3 week it is, but it's either the week of the 14th or  
4 the 21st. I mean, could we say the 25th to give me  
5 enough wiggle room there?

6           THE COURT: Well, see, I was going to give  
7 you, like, September 1st or September 8th.

8           MR. GILLER: Oh, that would be -- yeah, if  
9 we could do that just because I'm -- one of those  
10 weeks -- I know I'm away those last two weeks.

11          THE COURT: Okay. Let's -- okay. Let's  
12 say September 8th. Okay. Thank you. All right.

13          Mr. Panero, could I have your opposition by  
14 October 6th?

15          MR. PENARO: I'm looking at a calendar  
16 here, Your Honor.

17                I think that's fine.

18          Ms. Kuan, who's also on the line, do you  
19 have any issue with the October 6th deadline?

20          MS. KUAN: That's fine with me. Thank you,  
21 Your Honor.

22          THE COURT: Okay. Much appreciated. Thank  
23 you.

24                And then the reply brief, if there is  
25 one -- and that's not -- I'm not encouraging it, but

1 I have to at least provide for it, October 20th for  
2 the reply.

3 MR. GILLER: Okay. That sounds good.

4 THE COURT: Okay. Great. All right.

5 So we will -- in the minute entry for  
6 today's conference, we'll put this new schedule in  
7 there. And I do appreciate everyone coming to this  
8 conference prepared and helping me understand a  
9 little bit more about this case. All right.

10 Mr. Penaro, from my perspective, sir, I've  
11 addressed the things that I wanted to, but if there  
12 is an issue that you'd like to discuss with me,  
13 please do so now.

14 MR. PENARO: Thank you for your time,  
15 Your Honor. I don't think we have anything else at  
16 this time.

17 Kristen -- or, Ms. Kuan, rather, do you  
18 need anything?

19 MS. KUAN: Nothing for me. Thank you,  
20 Your Honor.

21 THE COURT: All right. And, yeah, this is  
22 my hint to the associates or the junior folks in  
23 this case, you should get to speak next time, I  
24 think.

25 Mr. Giller, anything else I should know

1 today?

2 MR. GILLER: No, but I agree. And next  
3 time, Ms. Benner will be doing some speaking, I  
4 promise. No, nothing else.

5 THE COURT: All right.

6 MR. PENARO: Likewise.

7 THE COURT: Okay. All right. I'm looking  
8 forward to that. I thank you. All right.

9 With that, we are adjourned. Thank you so  
10 much. I wish you well. And to the extent you are  
11 taking some time off this summer, I wish you an  
12 enjoyable vacation. We're adjourned. Thanks.

13 MR. GILLER: Thank you, Judge.

14 MR. PENARO: Thank you.

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## C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Johnson v. Clearview AI; Docket #22CV2441 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: September 7, 2023